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SOCIAL, HUMANITARIAN AND HUMAN RIGHTS QUESTIONS: REPORTS OF SUBSIDIARY BODIES, CONFERENCES AND RELATED QUESTIONS: HUMAN RIGHTS QUESTIONS

Extract from the report of the Committee on Economic, Social and Cultural Rights on its tenth session, held from 2 to 20 May 1994

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I. DECISIONS ADOPTED BY THE COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS AT ITS TENTH SESSION

Fact Sheet

1. The Committee recalls its request made two years ago that the Fact Sheet published by the Centre for Human Rights dealing with the Covenant on Economic, Social and Cultural Rights be substantially revised and reissued on an urgent basis. This request was agreed to at the time but no action has yet been taken. In view of the dire need for the Committee to have a general explanatory text available for those interested in learning about the Covenant and the work of the Committee, the Centre for Human Rights is requested to accord the highest possible priority to this project with a view to a draft being available by the Committee's eleventh session in November 1994.

Social Summit

2. The Committee wishes to affirm that it attaches great importance to the preparations for, and the outcome of, the World Summit for Social Development to be held in Copenhagen in March 1995. At its ninth session the Committee held very useful discussions with the Coordinator of the Summit and, in the course of its tenth session the Committee's chairperson was invited to address an inter-agency meeting convened in Geneva to review the first draft of the Declaration and Programme of Action to be adopted by the Summit.

3. Given the extremely close links between the agenda for the Summit and the responsibilities of the Committee it decides to send its Rapporteur to represent it at the second Preparatory Committee meeting to be held in New York in August 1994. It requests its Rapporteur to bring the importance of the Covenant and the potential roles that may be played by the Committee in the follow-up to the Summit to the attention of those participating in the Preparatory Committee session. The Committee also decides to send one of its members, to be nominated at its eleventh session, to participate in the Social Summit.

Fourth World Conference on Women

4. The Committee notes that the Fourth Conference on Women will be held in Beijing in September 1995. Given the fundamental importance of the promotion of economic, social and cultural rights to the effective advancement of the status of women, the Committee decides to follow the preparations for the Conference very carefully. For this reason it requests the Secretariat to provide it, at its eleventh session, with a briefing paper on current developments in relation to preparations for the Conference with particular emphasis on the role of economic, social and cultural rights. It decides to adopt a position paper in relation to the Conference at that session and to be represented at the Conference itself by a member to be nominated at its eleventh session.

Publication of the reports of the Committee

5. The Committee notes with regret that the report of its eighth session held in May 1993 and its ninth session held in November-December 1993 was not available to it until 20 May 1994. It understands that this delay results from

the assumption that the report need not be published until it is required by the Economic and Social Council. The Committee notes that this delay is extremely inconvenient for Governments, international agencies, NGOs and others, especially at the national level, for whom the report is the only practical way of obtaining access to the work of the Committee. It therefore requests that every effort be made to publish the Committee's annual report as soon as possible after the relevant session and not to delay publication for six months because of the timing of the Council's annual session.

Honoraria

6. The Committee notes that the decision adopted by the Economic and Social Council (decision 1993/297 of 28 July 1993) to the effect that members of the Committee should, like their counterparts in other treaty bodies, receive an honorarium for their work has not been acted upon by the General Assembly. While it has been informed that this may be due in part to an overall review by the Secretariat of the payment of honoraria, it wishes to point out that its request for action on this matter already dates back several years and urges that attention be given to this matter as soon as possible.

Coordination with the Council of Europe and the ILO Committee of Experts

7. The Committee had a very useful discussion at its tenth session with a representative of the Committee of Independent Experts established pursuant to the Council of Europe's European Social Charter. The Committee notes that, to a very significant extent, the problems and challenges which it faces are similar to those faced by the Committee of Independent Experts, as well as by the ILO's Committee of Experts on the Application of Conventions and Recommendations. It believes that it would be extremely valuable, not only for purposes of mutual enlightenment but also to increase coordination and gain a better overview of the demands placed upon States and others concerned, if a meeting could be convened of representatives of the three bodies. It requests the ILO to consider hosting such a meeting at a mutually convenient time, preferably before or after a meeting of the Committee on Economic, Social and Cultural Rights, on the assumption that the travel costs and expenses of the participating experts would be met by their respective organizations.

Advisory services

8. The Committee expresses its thanks to the Secretariat for providing it, as requested, with a paper on the relationship between economic, social and cultural rights and the provision of advisory services and technical cooperation to States. Because of the late receipt of this paper and the importance of its availability in the relevant languages, the Committee decides to defer consideration of this matter until its eleventh session. It will take up the matter again at that time with a view to adopting a formal position on the issues arising from the paper and perhaps providing an indicative list of the types of project which it considers might most usefully be undertaken in order to promote economic, social and cultural rights.

Optional protocol

9. The Committee emphasizes the importance that it attaches to the preparation and adoption of an Optional protocol to the Covenant and decides to continue its work on that issue at its eleventh session on the basis of a revised paper to be submitted before that session by Mr. Philip Alston.

Day of general discussion

10. The Committee decides to hold a day of general discussion at its twelfth session (on the Monday of the third week) on general questions relating to the interpretation and application of the obligations of States parties as recognized by the Covenant.

Secretariat servicing

11. The Committee recalls that it has, for a number of years, requested the Secretary-General to increase the extent of the servicing provided to it by the Centre for Human Rights. These requests have so far gone unheeded. The Committee continues to operate with the assistance of only a single professional - the Committee Secretary - who performs duties for other treaty bodies as well. No specific expertise in relation to economic, social and cultural rights is provided to the Committee.

12. In view of the unique responsibility that the Committee bears in relation to economic, social and cultural rights, of the particular complexity and scope of these issues, and of the Committee's heavy workload in relation to the examination of reports, the drafting of general comments, the preparation of days of general discussion, and a wide range of other matters referred to it by the Commission on Human Rights and other United Nations organs, it urgently requests the Secretary-General to provide it with the services of a full-time expert in this field, in addition to its Secretary.

General Comments

13. The Committee decides to accord the highest priority at its eleventh session to the consideration and adoption of the Draft General Comments on persons with disabilities and that on the economic, social and cultural rights of the elderly. It requests Mrs. M. Jimenez Butragueno, on the basis of the consultations held at its tenth session, to provide it with a revised draft general comment on the economic, social and cultural rights of the elderly for consideration at the eleventh session.

II. THE WORLD SUMMIT ON SOCIAL DEVELOPMENT AND THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Statement of the Committee on Economic, Social and Cultural Rights, May 1994

14. In March 1995 the World Summit for Social Development will be held in Copenhagen. This will follow both the World Conference on Human Rights in Vienna in June 1993 and the International Conference on Population and Development in Cairo in September 1994. It will precede the Fourth World Conference on Women to be held in Beijing in September 1995, and the second United Nations Conference on Human Settlements (Habitat II) to be held in Istanbul in 1996. In all of these contexts the question of economic and social human rights is of major importance, but it is in relation to the Social Summit that the link is of the most fundamental importance.

15. A large proportion of the issues on the Social Summit's agenda falls squarely within the domain of economic, social and cultural rights recognized in general terms in the Universal Declaration of Human Rights in 1948 and more specifically in the International Covenant on Economic, Social and Cultural Rights, of 1966. The challenges facing the Summit are of both a normative and procedural character. The normative dimension involves the identification and articulation of the "principles, goals, policy orientations and common challenges" of social development policy at all levels. The procedural dimension involves issues of "implementation and follow-up".

16. In relation to each of these dimensions the relevance of the Covenant is immediate and direct. Its neglect will have significant adverse consequences both from the viewpoint of the international human rights regime and of the evolving approach to social development. The exclusion or marginalization of the Covenant will signal the continuing separation of human rights and social development issues, in complete contradiction to the oft-recognized need for an integrated approach. Similarly, neglect of the implementation and monitoring mechanism established under the Covenant will risk a futile proliferation of ineffectual approaches to implementation at the expense of working towards ensuring the effectiveness of those that already exist.

17. The first session of the Preparatory Committee for the Summit discussed various approaches to, and the possible content of, a draft Declaration and a draft Programme of Action. In the list of "elements mentioned for a draft Declaration", which is annexed to the report of the first session, reference is made to virtually every objective recognized in the International Covenant on Economic, Social and Cultural Rights. However, the Covenant itself is never referred to and most of the relevant objectives are characterized not as "human rights" but as mere goals or principles. One pertinent example, among many that could be given, is the reference in the list to the "new concept of 'human security'", according to which "the personal security of individuals and communities, based on sufficient income, education, health and housing should be given priority". The same paragraph urges that "social development must be considered a right ...". But there is no mention of the fact that development is already recognized as a human right or of the fact that each and every one of

the component parts of this "new concept" has long been recognized in the Covenant as a human right.

18. Factors such as the reduced role being played by the State in a great many societies, an increasing emphasis on policies of deregulation and privatization, a markedly greater reliance on free market mechanisms, and the globalization of an ever larger part of all national economies, have all combined to challenge many of the assumptions on which social policy makers have previously operated. Indeed, it is increasingly clear that, as a result of these changes, many of the specific policy approaches endorsed by the international community in the past 30 years or so have been called into question and in some cases even rendered obsolete or invalid. But it is precisely at a time of such rapid and unpredictable change in a truly global economy that it is essential to reaffirm the fundamental values of social justice which must guide policy-making at all levels. This is clearly recognized in the mandate given to the Summit and in the contributions made by the principal participants.

19. Thus, the first question before the Summit is what those values are and how they can most effectively be reaffirmed. This involves two aspects: the recognition of fundamental norms and the identification of specific principles and policy approaches designed to give content and effect to those norms. In relation to the first aspect, it is imperative that the starting-point should be the International Covenant on Economic, Social and Cultural Rights and each of the specific rights recognized therein. There are several compelling reasons which support this approach:

(a) The Covenant has now been ratified or acceded to by some 130 States;

(b) The great majority of the world's Governments have thus voluntarily accepted a range of binding legal obligations in relation to the promotion of economic, social and cultural rights;

(c) Those Governments are also legally required to report regularly to an international monitoring body whose responsibility is to monitor their compliance with the obligations they have undertaken;

(d) The obligations themselves are stated in broad normative terms and it is for the international community and States themselves to develop further the details of the specific obligations which flow from each of the rights (just as concepts such as a "fair trial", "due process", "arbitrariness" and "inhuman treatment" have been given reasonably precise and widely accepted content in other human rights contexts).

20. Before considering the question of implementation and follow-up it is appropriate to ask why the Covenant has been largely neglected to date in the social development context and why this neglect should now be reversed. The first reason relates to the element of political controversy that surrounded early efforts, especially of a bilateral nature, to promote respect for human rights. These efforts often placed little reliance upon internationally accepted standards and appropriate international procedures and tended to display a greatly exaggerated faith in the effectiveness of sanctions. The second reason is that international human rights treaty obligations had, up

until only a decade or so ago, been accepted only by a minority of States Members of the United Nations. Today, 150 States are parties to the Convention on the Rights of the Child alone and more than 170 States have ratified or acceded to one or more of the basic core international human rights treaties. The third reason relates to the influence of the Cold War which situated much of the general human rights debate in a context of ideological controversy. This affected economic, social and cultural rights in particular, since these were often portrayed falsely as being solely the concern of either the Communist countries or a handful of developing countries.

21. Thus, the reasons which led to an overwhelming reluctance to refer specifically to human rights obligations in the various development decade strategies, as well as in various other contexts relating to social development, are no longer valid. Instead, the commitments contained in the Declaration and Programme of Action of the Vienna World Conference on Human Rights and in a range of other recent international policy statements (including the Declaration on the Right to Development) serve to underline the importance of integrating human rights and development objectives.

22. Moreover, while the fundamental norms to be reflected in the outcome of the Social Summit process can be expressed in relation to concepts such as "basic needs", "extreme poverty", or "human security", it is surely counter-productive to continue the proliferation of such terms in the forlorn hope that yet another new label will create a new reality. Instead, it is time to return to basics, to reaffirm these fundamental values in a language which has clearly been accepted by the great majority of the world's Governments and which has an empowering potential which is far greater than any of the "new" terms that seem (temporarily) so compelling to many development specialists but which, from the perspective of those whose basic economic, social and cultural rights are being ignored or violated, are little more than fancy but unfamiliar slogans which are devoid of any power of mobilization or transformation.

23. It is therefore proposed that the objective of achieving universal ratification of the Covenant by the year 2000 be endorsed in the Summit Declaration and that the specific economic, social and cultural rights recognized in the Covenant be used as the framework for the relevant part of the Programme of Action dealing with goals and objectives.

24. Moreover, given the relatively general terms in which the rights are formulated, it would be extremely valuable for the Summit Programme to identify specific sub-goals and benchmarks, as well as other means, by which the substance of the substantive obligations flowing from the rights can be further developed.

25. Beyond this normative dimension, the most important challenge facing the Social Summit lies not in the reiteration of broad commitments already undertaken many times over in documents such as the Declaration on Social Progress and Development, the four international Development Decade Strategies, the World Employment Conference Declaration, the Children's Summit, and the Declarations of Alma Ata, Jomtien, Vienna and elsewhere. Rather, it is to devise means of implementation and follow-up which succeed in giving substance

to what can otherwise become yet another set of grand rhetorical statements which increase the cynicism of observers and participants alike.

26. The Preparatory Committee will inevitably, and appropriately, endorse the existing responsibilities of different agencies and bodies within the United Nations family for the monitoring of commitments undertaken in relation to specific sectoral and other aspects of the Declaration. It will also be called upon to create an enhanced role for the Commission on Social Development and perhaps also for the Economic and Social Council. None of these actions is incompatible with according a central role to the Committee on Economic, Social and Cultural Rights for the monitoring of the economic, social and cultural rights-related commitments reflected in the Programme of Action. There are several reasons favouring such an approach:

(a) Some 130 States are already obligated to report on a regular basis to the Committee on the extent to which they have succeeded, or otherwise, in giving effect to each of the rights recognized in the Covenant, including the rights to reasonable labour conditions, social security, food, housing, health, education and culture;

(b) The Committee itself, although charged with responsibility for this monitoring task, is a creation of the Economic and Social Council and reports to it; its mandate can accordingly be expanded and adapted to take account of new tasks emanating from the Social Summit; and

(c) This is an ideal setting in which social development and human rights concerns can effectively be integrated and in which the cooperative efforts of different agencies and bodies can be brought together in a non-political context in which genuine accountability can be demonstrated by Governments in relation to social development objectives.

27. An additional, but somewhat negative argument may also be adduced. It is that no other expert body is ever likely to have the legally binding prerogative that is vested in the Committee on Economic, Social and Cultural Rights to hold States accountable in this area. Moreover, the creation of a separate, additional mechanism which ignores the pre-existing responsibilities of the Committee will inevitably result in the duplication of functions which the system has committed itself to avoid as well as increasing the existing burden upon Governments which are already required to report to a plethora of international forums. The Committee takes full account of the contributions of all United Nations bodies, as well as non-governmental organizations and other experts in its work.

28. It is therefore recommended that the Social Summit should vest principal responsibility for the monitoring of the commitments undertaken by States as a result of the Copenhagen meeting in the Committee on Economic, Social and Cultural Rights and that the Committee's mandate and methods of work be adjusted accordingly to accommodate such responsibilities.